Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

Mary A. Jasso, et. al.

Petitioners

v.

California Department of Forestry, et. al.

Respondents, et. al.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITION FOR WRIT OF CERTIORARI

Mary Jasso
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Petitioner in Pro Per

QUESTIONS PRESENTED

1. *Whether state defendants or their employees that withhold evidence during Discovery, that does show the documents and statements they submitted to the courts to deny liability, were false, commit fraud on the courts and therefore are in violation of a plaintiff's Fourteenth Amendment rights to due process and equal protection of the Laws, and by committing such acts, give up their right to qualified immunity of any kind.*

2. *Whether the Ninth Circuit's affirming the District Court's dismissal of plaintiff's case without leave to amend, on the grounds that Title 18 U.S.C. §1864, does not grant plaintiffs' a right to private action in federal courts when subsection (e) states an injured party is to commence an action in the District Court.*

3. *Whether Title 42 §1983, et. seq., create a right of private action in the federal courts for plaintiffs' alleging State defendants' colluded together under color of law to violate their Fourteenth Amendment rights, to due process and equal protection of the Laws.*

4. *Whether a plaintiff can be dismissed pursuant to a defendants Rule 12(b)(2) and 2(b)(6) motion from federal court on the grounds of collateral estoppel, res judicata or Rooker Feldman, due to defendants' claims to the lower courts of prior state litigation that never took place.*

PARTIES

1. Petitioner is Mary A. Jasso, injured party, on behalf of herself and all others similarly situated.

Plaintiffs and Appellants, in Pro Per

v.

1. California Department of Forestry & Fire Protection.
2. California Department of General Services and Telecommunications Division.
3. California Department of Justice.
4. Jerry Brown, Individually, and in his Capacity as Attorney General for the State of California.
5. Catherine Guess, Individually and in her capacity as Deputy Attorney General for the State of California.
6. Barry Hemphill, Individually and in his capacity as former Deputy Director for California General Services Department of Telecommunications Division.
7. Glen Nash, Individually, and in his capacity as Engineering Services Section Head for California General Services Department of Telecommunications Division
8. Richard Williams, Individually and in his capacity as Senior Telecommunications Engineer for the California Department of General Services Telecommunications Division.

9. Michael D. Ensminger, Individually and in his capacity as Associate Engineer for the California Department of General Services Telecommunications Division.
10. Al Muir, Individually, and in his capacity as Operations Region 2 Manager for the California Department of General Services Telecommunications Division.
11. Rich Zanni, Individually and in his capacity as Area No. 2 Supervisor for the California Department of General Services Telecommunications Division.
12. Brad Lutts, Individually and in his capacity as Unit Chief Modoc Lassen Unit California Department of Forestry and Fire Protection,

Defendants/Respondents

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PROCEDURAL HISTORY

1. Mandate Ninth Circuit Court of Appeals, dated August 12, 2010.
2. Order for Denial of Rehearing, Ninth Circuit Court of Appeals, dated August 3, 2010.
3. Memorandum, Ninth Circuit Court of Appeals, dated, June 22, 2010.
4. Order for Denial of Rule 59(e) Motion, by District Court for the Eastern District of California, dated April 17, 2009.
5. Order, United States District Court for the Eastern District of California, dated March 30, 2009.
6. Findings and Recommendations, District Court for the Eastern District of California, dated March 12, 2009.

JURISDICTION STATEMENT

The judgment of the Ninth Circuit Court of Appeals was entered on August 12, 2007. The Ninth Circuit denied both Petition for Review and for Petition for Rehearing, on or about August 12, 2010, This Court has jurisdiction of this matter pursuant to Title 28 U.S.C. sec. §1254(1), §1331, §1343(a)(3)(4), and §1357; Title 18 U.S.C. §1864(e); Title 42 U.S.C. §1983, §1985 and §1988; and Title 47 U.S.C. §505.

STATEMENT OF THE CASE

Appellant's case is based on her claims of injuries on Federal Lands under color of Law and the Defendants' conspiracy to commit fraud and fraud on the courts to escape liability for those injuries.

Appellant's journey to this High Court comes about due to the lower Federal Courts refusal to consider Federal records that contradict the Defendants alleged

fraudulent documents and claims of immunity that they legally do not have the right to claim. She calls on this Court to step in and remind the lower courts that when federal records do not match the defendants self-produced documents, statements and claims, federal records are to be considered by the lower federal courts as the supreme evidence in a federal plaintiff's action for federal causes of action, alleging State defendants' committed abuse of powers under color of Law.

This Appellant also calls on this High Court to remind the lower courts and the Defendants, that claims of injury under color of law, abuse of powers that denied a plaintiff fair and equal protection of the Laws and rights to due process are Constitutional claims, that fall under Federal Jurisdiction.

The District Court has stated it has no subject matter jurisdiction for Title 42 U.S.C. §1983 and §1985, for plaintiffs claims the defendants violated their Constitutional rights to due process and equal protection of the Laws. The District Court has stated that Title 18 U.S.C. §1864, does not contain language that grants the Plaintiffs a right to private action and by doing so, stripped the Plaintiffs of the rights to protection that §1864 provides a citizen injured on Federal Lands.

The Ninth Circuit Court of Appeals has affirmed the District Court's Opinion. This Court has stated in F.D.I.C. v. Meyer (92-741), 510 U.S. 471 (1994) *"...and, by definition, federal law, not state law, provides the source of liability for a claim alleging the deprivation of a federal constitutional right."*

Appellant has been left with no other recourse than to make an Appeal to this Court to protect her Federal Rights to Federal Court, Federal statutes and Federal Constitution protection.

APPELLANT'S CIRCUMSTANCES AND BACKGROUND

In summer of 2002, Appellant became seriously ill and permanently disabled in 2002, the cause for her ailments were unknown at the time.

In November 2003, Appellant learned she had been exposed to radiation from the defendants' Department of Forestry and California General Services Telecommunications Division antennae, located within the Modoc National Forest at Likely Mountain, California, while working as a lookout for defendants' Department of Forestry and had all the symptoms of radiation sickness.

In 2004, the California Fire Fighters Union, which Appellant was a member of when she was injured by radiation exposure, requested the Department of Forestry to conduct radiation level tests at Likely Mountain.

Defendants California Department of Forestry, Brad Lutts, California General Services Telecommunications Division, Barry Hemphill, Richard Williams, Michael Ensminger, Al Muir, Rich Zanni, in concert together issued a report stating to the effect that all the state frequencies had been tested at Likely Mountain, February 5, 2005 and they found no harmful radiation levels from the state entities antennas at Likely Mountain and claimed Appellants injuries were not due to their antennae that was mounted to and/or surrounded the lookout tower.

Appellant with no compensation or medical care for her injuries — which included toxic encephalopathy, partial paralysis and atrophy of her left side, moderate pulmonary damage, eye damage, tumors in her liver, adreno gland and thyroid, nerve damage, moderate hearing loss, severe memory loss that spanned decades of her past life among other physical maladies — and with no other recourse, filed suit along with her spouse, who also suffered severe injury from radiation exposure at the

Mountain, against the various State defendants doing business at Likely Mountain, for damages and medical costs in Superior Court, in July of 2005 for Negligence Per Se. Defendants in that case filed a demurrer to dismiss the action.

The Superior Court removed the Appellant Mary Jasso from the case in for lack of subject matter jurisdiction due to State Venue Laws, but allowed her spouse, children and grandchildren to continue on with their separate claims of Negligence Per Se against the defendants, stating the following in its ruling; *"The Court finds the second amended complaint states facts sufficient to overcome demurrer as to mandatory duty under 8. C.C.R. §8618 and 47 C.F.R. §1.1307(b)."* [Dist.Crt. Dkt. No. 5-2. Def. Motion to Dismiss. Ex. B. (see Vol. 2. App. Ex. No. 7, pg. 31)].

Appellant did appeal to the California Court of Appeals Third Appellate District, the question of State venue. That Court ruled in May 2007, *"that barring a cover-up,"* State venue prevented her from maintaining a civil suit, and decreed *"all other issues are moot."* [see Vol. 2. App. Ex. No. 10. pg. 50, ¶2]. The California Supreme Court, likewise, declined to review the venue question in August 2007 [see Vol. 2. App. Ex. No. 9. pgs. 38-39], as did this High Court March 2008 [see Vol. 2. App. Ex. No. 8. pgs. 37-38 (Case No. 07-604)].

In November 2007, defendants California Department of Forestry, Brad Lutts, California Telecommunications Division, Barry Hemphill, Richard Williams and Michael Ensminger, California Department of Justice, Jerry Brown and Catherine Guess, released documents they had been withholding from Discovery and subpoena. The documents did show the defendants had not included or tested the microwaves frequencies at the telecommunications site at Likely Mountain as they had claimed and/

or testified to the Appellant, her co-worker Illa Garcia, and the courts.

Appellant then filed a Complaint with her co-worker in federal Court, December 2007 [see Vol. 2. App. Ex. No. 11. pgs. 50-65], for her injuries on Federal Lands pursuant to Title 18 U.S.C. §1864(a)(3)(e), and for violations of her civil rights pursuant to 42 U.S.C. §1983, §1985 and §1988, alleging the defendants had violated her civil rights to due process under color of law (18 U.S.C. §241 and §242), when they injured her on Federal Lands, proceeded to withhold evidence from discovery, created fraudulent documents, submitted those documents to the courts and made false statements to the courts and in general had obstructed justice and violated Appellant's right to due process in the courts and equal protection of the Laws, including Article 6, clause 2, of the Constitution. [Vol. 2. App. Ex. 11. pg. 54, ¶3].

On March 30, 2009, the Federal District Court, without hearing or leave to amend, dismissed Appellant's Complaint on the grounds that it lacked subject matter jurisdiction. Plaintiff for unknown reasons did not receive her copy of the Findings and immediately filed a Motion pursuant to Rule 59(e), when she did receive her copy of the final Order from the Court. The District Court, denied plaintiffs Rule 59(e) Motion, on April 17, 2009. Appellant filed a timely appeal in Ninth Circuit and on April 29, 2010. On August 12, 2010, the Ninth Circuit Court of Appeals issued a final Mandate, affirming the District Court's dismissal of plaintiff's case.

It is from the aforementioned dismissals, that the Appellant makes her appeal to the High Court.

ARGUMENT PART A

QUESTION 1.

Whether state defendants or their employees that withhold evidence during Discovery, that does show the documents and statements they submitted to the courts to deny liability, were false, commit fraud on the courts and therefore are in violation of a plaintiff's Fourteenth Amendment rights to due process and equal protection of the Laws, and by committing such acts, give up their right to qualified immunity of any kind.

At the heart of Appellant's appeal is her allegations the defendants produced fraudulent documents and made false statements to cover-up their negligence under color of Law at their Likely Mountain Telecommunications site, between the years 2005 – 2010, and used those documents and statements to commit fraud on state and federal courts to escape liability and in doing so obstructed justice and interfered with this Appellants rights to due process and equal protection of the Laws.

Appellant in 2005, filed suit against the state defendants California Department of Forestry and California Division of Telecommunications, among other State entities doing business at Likely Mountain in Superior Court, for her injuries as they had refused to pay her medical bills or grant her emergency medical treatment. Her civil case was dismissed for lack of venue due to California Law. [see Vol. 2. App. Ex. No.10. pg. 48, ¶2]. Appellant did appeal all the way to this High Court, but the rulings for dismissal pursuant to State venue law held. [see Vol. 2. App. Ex. No. 10, pg. 50 ¶2].

In November 2007, Defendants' released copies of the *Original Field Notes* that they had withheld from Discovery and subpoena, for the radiation testing they had conducted February 2005, at Likely Mountain.

The *Field Notes* authored by defendant Michael Ensminger, did show the aforementioned defendants reports and statements made and/or submitted to the state and federal courts and Appellant, were false and for the reasons stated below"

1. The defendants have repeatedly claimed to the Appellant and the courts, they tested all the frequencies at their Likely Mountain telecommunications site and found no levels of radiation that were above that allowed by Law (Title 47 C.F.R. §1.1310), and denied liability for Appellant's injuries based on those claims. The actual *Field Notes* of the February 2005, radiation levels test, did show the defendants tested only 7 of the 47 frequencies being operated at the Mountain by the State and none of those tested included the microwave frequencies. Thus the defendants' knowingly omitted 40 frequencies, including all their federally licensed **microwave frequencies** from the testing process, their reports, their declarations and testimony. [Dist.Crt. Dkt. 8. Plntf. Reply Attach. #1. Exhibits, D, E, F, & G. (see Vol. 2. App. Ex. 8. pg. 32)].

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[1]Appellant has since learned the State microwaves by all known consensus emit radiation in excess of 100 times over that allowed by Law for human exposure pursuant to Title 47 C.F.R. §1.1310.

2. The difference between the defendants' and/or their employees reports and sworn statements and federal records show the defendants, allegedly, and in concert together, engaged in a fraudulent cover-up of their negligence under color of law, to essentially deny and escape liability for the plaintiffs' injuries and then in concert together took that fraud into the state federal courts.[2]

---

[2] In April 2008, the Defendants Richard Williams and Michael Ensminger, made the same alleged fraudulent declarations for

submission to the District Court, to aid the private corporations doing business at Likely Mountain, to escape liability. [Case No. 2:05-cv-02649; Dkt. No. 170. #4-5].

Such acts and conduct by defendants to escape liability is clearly fraud on the courts and it shocks the conscience of this Appellant and it should shock the conscience of this High Court, that so many state entities and state employees would actively engage in the alleged fraud on the courts. For it has always been considered by officer's of the court, that a court cannot render a fair and impartial opinion when it has been given fraudulent information by the defendants and based that opinion on the fraudulent information [see 892 F. 2d 1115 - Aoude v. Mobil Oil Corporation. (1989). Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. & Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985); Hazel-Atlas Co. v. Hartford Co., 322 US 238 - Supreme Court 1944].

The alleged submissions of fraudulent documents and statements made by the Defendants Telecommunications' Division, Richard Williams and Michael Ensminger to the District Court, falls under Title 18 U.S.C. §1001 and such acts are a federal crime. [United States v. Yermian, 468 U.S. 63 (1984)]. Such acts are also a crime under California Law pursuant to C.P.C. §118(a).[3]

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[3] C.P.C. §118(a). "*Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury. (C.P.C. §126. "Perjury is punishable by imprisonment in the state prison for two, three or four years.)*"

District Court statement One;

Plaintiffs' first and second claims, alleging negligent and intentional torts, were thoroughly considered and rejected by the state courts, as least as to common defendants California Department of Forestry and Fire Protection, and California Department of General Services Telecommunications Division. Recasting these claims as federal civil rights violations does not avoid application of the Rooker-Feldman doctrine nor, therefore, the conclusion of the state courts that plaintiffs' exclusive remedies lay with the state workers' compensation system... [see Vol. 2. App. Ex. No. 6. pg. 18, ¶2].

Clearly the above statement does not match with the facts of plaintiffs' Mary Jasso's and Illa Garcia's federal case. Workers' Compensation Law is not relevant to the Plaintiffs' case as Plaintiffs allegations of fraud and fraud on the courts, concern the years 2005 through 2010. Neither Plaintiff was working for the defendants at that time.

First and foremost; Plaintiffs Mary Jasso and Illa Garcia, did not litigate any part of their *negligent and intentional torts,* in state courts. They were barred from civil action due to State venue law. The Court based the above statement on information given to it by the Defendants. [Dist.Crt. Dkt. No. 7. Def. Motion to Dismiss. pg. 3, ¶1 (see Vol. 2. App. Ex. No. 8, pg. 31], which it accepted at face value and/or as a *speaking motion* [see Vol. 2. App. Ex. No. 6. pg. 14-15], and used Defendants' false claims and misinformation [see Vol. 2. App. Ex. 6, pgs. 11-12], to render its decision to dismiss the Plaintiffs' from federal court. The Court was blinded to the fact that the only litigation that took place in State court for the Plaintiffs was venue by the defendants claims and /or omissions of the true facts.

Second point; Plaintiffs Mary Jasso and Illa Garcia, have not recast their claims under federal civil rights in order to exercise their First Amendment rights in federal court. Their cause of action for civil rights and abuse of powers, in federal court are federal causes of action based on federal statute that allow for federal private right of action (42 U.S.C. 1983 and 1985) and are not based in common state tort law as the Defendants have claimed and the lower Courts have upheld.

Third point; Plaintiffs' cause of action for injury by hazardous device[4] on Federal Lands, is a federal claim pursuant to 18 U.S.C. §1864, which allows for a federal private right of action, that is not protected by California Workers' Compensation venue and for good cause.

[4] "Title 47 C.F.R. §15.3(o); *Intentional radiator. A device that intentionally generates and emits radio frequency energy by radiation or induction.*

a. The Defendants' used the alleged fraud and fraud on the courts, to reject liability and did not pay compensation for the Plaintiffs' injuries as required by Title C.L.C. §3600.

> *"3600. (a) Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558, shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:..."*
>
> *"3602(c) In all cases where the conditions of compensation set forth in Section 3600 do not concur, the liability of the employer shall be the same as if this division had not been enacted."*

Pursuant to C.L.C. §3602(c), the Plaintiffs' can bring civil suit for their injuries into Federal court. [see Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. & Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985) *Saucier v. Katz , 533 U.S.* 194 (2001); Fireman's Ins. Co. of Newark, N.J. v. Washburn County, 2 Wis 2d 214, 85 N.W. 2d 840(1957); Olmstead v. U.S., 277 US 438 485].

District Court Statement Two;

"Plaintiff's extrinsic fraud claim lacks foundation both in the present complaint and as set forth in plaintiffs' related action also pending before this court. In this case, the complaint fails to allege sufficient facts upon which to base a claim for extrinsic fraud. They offer no specific facts or particularized details in support of their allegation that the 2005 and 2006 state test results, or documents prepared thereon, were inherently "false and misleading," nor that radiation levels on Likely Mountain were impermissibly elevated during the years 1992 to 2002..." [see Vol. 2. App. Ex. No. 6. pg. 20, ¶2].

Plaintiffs have argued to the lower Courts, that it was not necessary that Plaintiffs show radiation level tests for the years *1992 to 2002*. The State microwave frequencies and antennas emit a constant and known amount of radiation that is over 100 times that allowed for human exposure. That constant has never changed since the day the microwaves became active beginning in the year 1980, according to federal license records.[5]

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[5]The Defendants did not include those microwave frequencies in their tests and why they turned them off before they allowed their telecommunication engineers to climb the lookout tower. The lookouts were not afforded the same equal protection from radiation emissions and exposure, as the State engineers have.

Plaintiffs did submit to the District Court, by affidavit, copies of the Field Notes and statements made by defendants showing that the microwave frequencies are not on them, despite the Defendants' claims they did test all the state frequencies. [DistCrt. Dkt. 8. Plntf. Reply. Attach. #1. Exhibit B, D, F, & G(see Vol. 2. App. Ex. No. 7, pg. 32)].

Appellant in the one opposition she has been allowed to make to the District Court, for her case against these defendants, submitted by Affidavit, a copy of a federal license for a 6765 microwave frequency being operated by the state at the Mountain to support her claims of fraud and the presence of harmful radiation levels at the Mountain. [Dist.Crt. Dkt. 8. Plntf. Reply. Attach. #1. Exhibit H(see Vol. 2. Ex. No. 7. pg. 32)] and did submit copies of the Defendants' Original Field Notes, test reports and Declarations to the Court [Dist.Crt. Dkt. 8. Plntf. Reply. Attach. #1. Exhibit B,C,E,F,G. (see Vol. 2. App. Ex. 7. pg. 32)], showing the microwave frequencies were not in the tests, reports, or testimony.

As for "*plaintiffs' related action also pending before this court*" (Case No. CIV 05-2649 and the Court had reassigned, to itself [see Vol. 2. App. Ex. No. 6. pg. 8-9, footnote 1], Appellant did submit by Affidavit, copies of Federal licenses that do show there are approximately 100 frequencies in operation at Likely Mountain, many of them are microwaves frequencies. Plaintiffs did also show the District Court, that 47 of those frequencies are in operation at the State's facilities. [Related Case No. CIV 05-2649. Dist.Crt. Dkt. No. 190. Plntf. Reply. Vol. 2. Section 32. Ex. A-R, pgs. 570-742].

The Court has before it copies of sworn declarations by defendants State employees Richard Williams and Michael Ensminger, that when compared to the *Original Field Notes* and the dozens of federal licenses that defendants operate under at Likely Mountain, do show the

Defendants have allegedly, made fraudulent statements and produced fraudulent documents, by omitting 40 frequencies from their tests, reports and testimony.

Chairman Tell's statement, Plaintiffs' submitted to the lower courts, was ample proof there were high radiation levels at Likely Mountain. Appellant feels that the District Court erred in not considering and/or overlooking more than 250 pages of Appellant's evidence with at least 200 of them being federal documents that did contradict the Defendant's sworn statements and documents submitted to the courts. Especially, since part of the basis of Appellant's case in Federal court, is the allegations of the Defendants' *abuse of powers, fraud and fraud on the courts and violations civil rights to due process and equal protection of the Laws.*

It is Appellant's belief, had the lower courts stopped to look at all the evidence and not just based their opinion on what the defendants claimed, it is more probable than not that they would not have granted blanket immunity to the defendants and the plaintiffs would not have been dismisssed by the lower courts. [Fitzpatrick v. Bitzer (1976); Scheuer v. Rhodes, 416 U.S. 232 (1974) Alexander v. Robertson, 882 F.2d 421, 424 (9th Cir.1989); Harlow v. Fitzgerald, 457 U. S. 800 (1982); Eichman v. Fotomat Corp., 147 Cal.App.3d 1170, 197 Cal.Rptr. 612 (1983); Brooks v. Pennsylvania R. Co., 91 F Sup 101 DC SD NY(1950); Haines v. Keener, 404 US 519, 30 L Ed 2d 652, 92 S CT 594(1972); Nanez v. Ritger, DC Wis. 304 F Sup 354(1969); Alejo v. City of Alhambra (1999) 75 Cal.App.4th 1180 , 89 Cal.Rptr.2d 768; Sears, Roebuck & Co. v. Blade (1956) 139 Cal.App.2d 580, 589].

QUESTION 2.

Whether the Ninth Circuit's affirming the District Court's dismissal of plaintiff's case without leave to amend, on the grounds that Title 18 U.S.C.

§1864, does not grant plaintiffs' a right to private action in federal courts when sub-section (e) states an injured party is to commence an action in the District Court.

District Court statement Three;

"Failure to State a Claim Under Federal Criminal Statutes Common to each of plaintiffs' causes of action is the contention that defendants violated the federal criminal statutes set forth at 18 U.S.C. §§ 241, 242, or 1864(a)(3). However, these statutes establish criminal penalties for violation of an individual's civil rights; they do not create private rights of action. See, e.g., Peabody v. United States, 394 F.2d 175, 177 (9th Cir.1968).

Accordingly, plaintiffs do not, and cannot, state a claim pursuant to 18 U.S.C. §§ 241, 242, or 1864." [see Vol. 2. App. Ex. No. 6. pg. 20, ¶2].

With all due respect, the above statement by the District Court's is in direct conflict of federal law, when it states; "*Accordingly, plaintiffs do not, and cannot, state a claim pursuant to 18 U.S.C. §§ 241, 242, or 1864.*" Section 1864, does state at subsection (e);

"18 U.S.C. §1864 (e) Any person injured as the result of a violation of subsection (a) may commence a civil action on his own behalf against any person who is alleged to be in violation of subsection (a). The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, in such civil actions. The court may award, in addition to monetary damages for any injury resulting from an alleged violation of subsection (a), costs of litigation, including reasonable attorney and expert witness fees, to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate."

Plaintiffs did cite on the face of their complaint §1864(a)(3), for injuries that occurred on Federal Lands and cited §1864(e), for venue [see App. No. 11. pg. 54 (Jurisdiction Statement)] and again in her prayer for relief [see App. No. 11. pg. 64 (Prayer for Relief)]. Congress was very explicit in section (e) when it stated "***The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, in such civil actions.*** (See Parden v. Terminal R. Co.,377 U.S. 184 (1964).

QUESTION 3.

Whether Title 42 §1983, et. seq., create a right of private action in the federal courts for plaintiffs' alleging State defendants' colluded together under color of law to violate their Fourteenth Amendment rights, to due process and equal protection of the Laws.

District Court's statement Four;

Plaintiffs' §1983 claims are premised generally on the alleged violation of plaintiffs' rights to due process and equal protection under the U.S. Constitution; however, neither right creates a cause of action based upon these facts." [seeVol. 2. App. Ex. No. 6. pg. 24, ¶1].

1. Pursuant to Title 42 U.S.C. §1983;

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, ***shall be liable to the party injured in an action at law, suit in equity...***"

2. Pursuant to Title 42 U.S.C. §1985;

... if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws."

"...if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a ***citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."***

It is Appellant's belief she has by her own injuries, allegations, and evidence submitted to the lower courts, has shown the defendants injured her under color of State and Federal Law when they exposed her to radiation. [6] In doing so the Defendants deprived her of her health, life span, life's memories, and earnings. Appellant has also alleged the Defendants' engaged in concert to fraudulently cover-up their negligence by committing fraud on the

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[6] Pursuant to 47 C.F.R. §1.1310; 29 C.F.R. § 1910.268(a)(3)(c)(1)(p)(2)(3); California Title 8 §8618, the Defendants were not to expose the Plaintiffs to dangerous radiation from their antennae and to post explicit warning signs at their microwave telecommunication site. Allegedly, they did not uphold the aforementioned statues and therefore injured the Plaintiffs on Federal Lands, under color of Law courts to escape liability for the plaintiffs' injuries. Such alleged acts under color of State and Federal law do fall under the umbrellas §1983 and §1985 and by Federal statute Appellant has federal standing and the right to

commence an action for damages if federal court. [See Hafer v. Melo, 502 U.S. 21 (1991);

District Court's statement Five;

"Similarly,"[t]o state a claim under 42 U.S.C. §1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiffs claim ." Complaint, ¶ 22. However, plaintiffs do not contend or otherwise. demonstrate that they are members of a protected class and do not, therefore, state an equal protection claim. The same omission undermines plaintiffs' claims pursuant to 42 U.S.C. § 1985. membership in a protected class." Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiffs that they were "denied the equal protection of the laws enacted to protect those who worked at telecommunication sites." Complaint, ¶ 22. However, plaintiffs do not contend or otherwise demonstrate that they are members of a protected class and do not, therefore, state an equal protection claim. The same omission undermines plaintiffs' claims pursuant to 42 U.S.C. §1985.[8] [see Vol. 2. App. No. 6. pg. pg. 24, ¶3].

The above statement by the District Court is not relevant to Appellant's section §1983 claim as can be seen below.

"To maintain an action under (42 USC) 1983, it is not necessary to allege or prove that the defendants intended to deprive Plaintiff of his Constitutional rights or that they acted willfully, purposely, or in furtherance of a conspiracy... it is sufficient to

establish that the deprivation...was the natural consequences of Defendants acting under the color of law..." Ethridge v Rhodos, DC Ohio 268 F Sup 83(1967); Whirl v. Kern, CA 5 Texas 407 F 2d 781 (1968) Ury v. Santee, DC Ill,(1969).

Nowhere in section §1983, is it stated that a citizen has to be a member of a protected class to fall under its umbrella, and/or has to allege the conspiracy be racially motivated or invidious discrimination, in nature. However, the plaintiffs did state in their Complaint they were a protected class, by making the following claims.

"These Plaintiffs are and/or were at all relevant times they were at LMT, innocent bystanders, victims and the class of persons that the law, Act, Article, and regulations of the United States, and State of California, were enacted to protect and that have been used and/or referred to in this complaint, supra." [see Vol.2. App. Ex. No. 11. pg.64, ¶39].

As for the plaintiffs having to prove the alleged *fraud on the courts*, has to be racially motivated or discriminatory, before the plaintiffs fall under the aforementioned statutes' umbrella, is questionable by this Appellant and should be questionable by this High Court. The act of conspiracy to violate a citizens' or former employee's Constitutional rights, whether because of race, class, or to escape liability, makes no difference, such acts still violate the Fifth, Seventh and Fourteenth Amendment rights of that citizen.

Fraud and *fraud on the courts*, is a felony under both the Laws of the United States and the State of California and such conduct and acts, are by all known standards in this Country, considered obstruction of justice and due process. When such acts are committed by more than one and those who are the State and/or its employees, it is a violation of that citizen's civil rights pursuant to the Fourteenth Amendment, Title 42, §1983

and §1985, and Title 18 §241 and 242.. The District Court should not be allowed to state it does not have subject matter jurisdiction for Plaintiffs' federal claims. [7]

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[7] If the District Court feels the Pro Se Plaintiffs failed to state it well enough to suit the Court, then at the very least it should have allowed the Plaintiffs the right to amend their complaint. It allowed the Defendants to amend their motion to dismiss, three times.

District Court's statement Six;

[8]*Plaintiffs rely on 42 U.S.C. § 1985 in support of their allegation that defendants conspired to submit false and misleading information to the state courts. However, plaintiffs do not contend that the alleged conspiracy was motivated by racial or other invidious discrimination. See 42 U.S.C. §1985(3); see also, e.g., Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th Cir.1992). Accordingly, plaintiffs do not state a claim pursuant to 42 U.S.C. § 1985.*
[see Vol. 2. App. Ex. No. 6. pg. 26, footnote 8].

The above statement is not relevant to section 1985, whereas, nowhere in section 1985, is it stated the conspiracy that is alleged, by a plaintiff, has to be racially motivated or a matter of discrimination before a citizen falls under the protection of section 1985. In fact nowhere are the words racially or discrimination, in any form, written into the section.

However, there is discrimination involved if that is what the Courts are looking for. The Defendants' trained their telecommunications' employees that worked at Likely Mountain in safe practices for radiation emissions from the antennas and gave them warning and personal protective equipment. They did not train, warn or provide protective equipment to the lookouts who worked at the same telecommunications site. The Defendants California Department of Forestry and California Teleommunications Division, in choosing to protect one class of employ-

ees from a State created danger, while choosing to leave another class of employees to fend for themselves for the same State created danger, did indeed knowingly practice invidious discrimination against the plaintiffs. Plaintiffs have complained that the Defendants did not train them or warn them of the hazardous radiation being emitted from their surrounding antennae, in their complaint. [see Vol. 2. App. Ex. No. 11. pg. 54-55, sec. b,c,d; pg. 61, ¶25].

QUESTION 4.

Whether plaintiffs can be dismissed from federal court pursuant to a Rule 12(b)(1) and/or 12(b)(6) motion, on the grounds of collateral estoppel, res judicata or Rooker Feldman for prior litigation that does not exist and/or pursuant to defendants' claims of immunities that by Law, that do not exist.

The District Court granted the Defendants' Rule 12(b)(1) and (12(b)(6) motion to dismiss Plaintiffs' case. In doing so, the Court has erred for it ruled on the basis of the Defendants' claims of prior litigation that never took place and various immunities that by Law they did not have. Hopefully this High Court will consider in some part this Appellant's plea. [see Raines v. Byrd (96-1671), 521 U.S. 811 (1997)].

District Court's statement Seven;

"*1. Application of the Rooker-Feldman Doctrine Plaintiffs' first and second causes of action sound in tort, while their third claim asserts abuse of powers associated with the alleged concealment of information in the state court proceedings. At the heart of plaintiffs' claims is the implicit request that this court overturn the reasoned conclusion of the state courts that plaintiffs' exclusive remedies, at*

least against defendants CDF and GSTD, lay with the state workers' compensation system. However, as explained below, this court is without jurisdiction to reconsider this conclusion." [Vol. 2. App. No. 6. pg. 17, ¶1].

Appellant in her Complaint did not ask the District Court to overturn any other court action, as there were no other state civil court actions for this plaintiff or her co-plaintiff, for the District Court to overturn. Instead, she and her co-plaintiff, complained and alleged, the defendants had manufactured false documents and made false statements to escape liability for their injuries, economic relief and medical care, and in doing so committed fraud on the courts and interfered with their rights to equal protection of the laws and due process in the courts. The Rooker Feldman doctrine does not apply in this instance as there is no state court tort action that involved the plaintiffs. [see Lance v. Dennis, (2006); Kougasian v. TMSL, Inc., 359 F.3d 1136, 1140(9th Cir.2004)].

District Court's statement Eight;

"...A federal action constitutes such a de facto appeal where 'claims raised in the federal court action are "inextricably intertwined" with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules.' Bianchi, 334 F.3d at 898. In such circumstances, 'the district court is in essence being called upon to review the state court decision.' Feldman, 460 U.S. at483 n. 16 []." Reusser v. Wachovia Bank, N.A., 525 F.3d 855, 858 -859 (9th Cir. 2008). The doctrine applies to individuals who were parties to the state court proceeding. Johnson v. De Grandy, 512 U.S. 997,1006 (1994)." [see Vol. 2. App. Ex. No. 6. pgs. 17-18].

There was **NO prior State civil court action,** involving the plaintiffs, nor have the plaintiffs called for the District Court to overturn any State court action. That is a piece of fiction created by the Defendants to deliberately confuse the Court. Nor are the plaintiffs' causes of action based on any prior state cases or causes of action in a state court or fall under state jurisdiction. [8]

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[8] Allegedly, the District Court's conclusion is entirely based on the defendants' misleading statements and documents submitted to Court to confuse the issues. The defendants judicially noticed prior state court documents, claiming Appellant and her co-plaintiff had already fully litigated their state and federal claims in state courts, omitting the fact that the litigation was for venue only and that they did not pay Workers' Comp. [Dist.Crt. Dkt. No. 7. Def. Motion to Dismiss. pg. 3. lines 4-6; Dkt. 5 (see Vol. 2. App. Ex. No. 7. pg. 31)] and [Ninth Cir. Dkt. No. 7-1. Def. Reply. pg. 2, ¶1]

The Ninth Circuit believing the Defendants claims, also drew the same erroneous conclusion as can be seen below.

Ninth Circuit Statement 1;

"The district court properly dismissed the first and second causes of action against the individual defendants acting in their personal capacities because a California state court previously reached a final adjudication on the merits of those causes of action in Garcia v. Dep't of Forestry and Fire Protection, Nos. C053667, C053793, 2007 WL 1520069 (Cal. App. May 25, 2007). See Kay v. City of Rancho Palos Verdes, 504 F.3d 803, 809 (9th Cir. 2007) (under California law, "[r]es judicata . . . prevents litigation of all grounds for . . . recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding") (citations and internal quotation marks omitted)." [see Vol. 2. App. Ex. No. 3. pg. 4, ¶2].

A Venue trial in State Court, can hardly be and/or should not be accepted by any Court as being full litigation for any civil claim of injury under color of law and most certainly not for injury on Federal Lands or alleged violations of due process, fraud on the courts, abuse of powers and civil rights, that occurred after the fact. [see Kemp Bros. Construction, Inc. v. Titan Electric Corp. 146 Cal. App.4th. 1474 (2007)].

ARGUMENT PART B

1. Federal Records and Declaration from the Chairman of U.S. Committee on Radiation, Submitted to the District Court, is Evidence enough to show cause.

District Court's statement Nine;

"Plaintiff's extrinsic fraud claim lacks foundation both in the present complaint and as set forth in plaintiffs' related action also pending before this court. In this case, the complaint fails to allege sufficient facts upon which to base a claim for extrinsic fraud. They offer no specific facts or particularized details in support of their allegation that the 2005 and 2006 state test results, or documents prepared thereon, were inherently "false and misleading," nor that radiation levels on Likely Mountain were impermissibly elevated during the years 1992 to 2002..." [see Vol. 2. App. Ex. No. 6. pg.20, ¶2].

Appellant did offer the testimony of Chairman Richard Tell of COMAR, the Institute of Electrical Engineers' (IEEE) Committee on Man and Radiation and the same Committee that sets the standards for human exposure to electromagnetic/radiofrequency radiation in the United States and which Institute is included within the language within Title 42 §1.1310, the statute that sets the

limits of human exposure to electromagnetic/radiofrequency radiation. Chairman Tell stated the following in his sworn Declaration.

> *"5. A person can experience two types of burn, one I refer to as the steady type and the other I refer to as the transient type. The steady type of radio frequency burn occurs when a person touches a conductor that has a radio frequency voltage on it that is sufficient to drive a current into the skin that results in localized heating and eventually a burn. The transient type of radio frequency burn comes about when a person starts to touch an object that is "hot" — i.e., an object that has high radio frequency voltage on it — and, just prior to contact with the object, an electrical arc jumps from the surface of the object to the skin. This arc is typically composed of very tiny arc and the local current density can be extremely high. When the arc hit the person's skin, the person is usually acutely aware of it and may very well describe the sensation a shock."* [Dist. Crt. Dkt. No. 8. Plntf. Reply. Attach. #1, Ex. J.(see Vol. 2. App. Ex. No. 7. pg. 32)].

Appellant believes she has submitted evidence to show her claims are based in truth. The copies of state and federal documents submitted to the Court, along with Chairman Tell's declaration, stating it takes high radiofrequency voltage, i.e., radiofrequency radiation to cause radiation shocks and burns, should have been evidence enough, to alert the District Court, the radiation levels at Likely Mountain, were not as benign as the defendants have made them out to be. [9]

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[9] Plaintiffs have long complained to the Defendants and the Courts that they suffered constant shocks when at Likely Mountain. They did not learn until 2007, the shocks were radiation burns. The

District Court gives an account of the shocks in its Findings. [Vol. 2. App. Ex. No. 6. pg. 9-10, footnote 2].

2. Are Federal and State Statutes and Federal Records Showing Plaintiffs' Allegations that the Defendants' Acted Under Color of Law, Deprived them of Life, Due Process and Equal Protection of the Laws are True, *Conclusory* Evidence in Federal Courts?

Ninth Circuit Statement 2;

The district court properly dismissed the third cause of action against the individual defendants acting in their personal capacities. Plaintiffs failed to allege facts that would establish the deprivation of any constitutional rights. See Woodrum v. Woodward County, Okl., 866 F.2d 1121, 1126 (9th Cir. 1989) (failure to allege any actual deprivation of constitutional rights, and conclusory allegations of conspiracy, do not give rise to liability under §1983); Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (per curiam) (holding that § 1985 conspiracy claim was properly dismissed because plaintiff had failed to allege facts establishing invidious discrimination)."[see Vol. 2. App. Ex. No. 3. pgs. 4-5].

The Ninth Circuit almost word for word, echoed the District Court, who almost word for word echoed the Defendants' motion to dismiss. The plaintiffs allegations and evidence submitted to the District Court, were not *conclusory,* unless the lower Courts' position is that the 250 plus federal records, a Declaration by the Chairman of the United States Committee on Radiation, are considered trivial pieces of paper and *conclusory,* because it can be shown by the Plaintiffs, that they contradict the Defendants' claims. The Plaintiffs have stated facts enough to *state a claim*, but if there is no Court that can see or hear them, no matter what they state and/or claim, it will be for them as it is for the tree falling in the woods, crashing

down with no one to bear witness to its demise, even though it made enough noise to shake the ground it fell on.

3. The District Court's Citation of Woodrum v. Woodward County, 866 F.2d 1121, 1126 (9th Cir. 1989), Has No Relevance to the Appellant's Claims or Case.

> *"The Fourteenth Amendment prohibits states from "deprivfing] any person of life, liberty, or property, without due process of law." Plaintiffs claim that they have been deprived "of life and memories of life" and "denied the freedom to choose what toxic exposure risks they would allow themselves to be exposed to." Compl., ¶ 22. However, "[m]ere negligence or lack of due care by state officials in the conduct of their duties does not trigger the substantive due process protections of the Fourteenth Amendment and therefore does not state a claim under section 1983." Woodrum v. Woodward County, 866 F.2d 1121, 1126 (9th Cir. 1989)."*
> [Vol. 2. App. Ex. No. 6. pg. 24, ¶2].

The District Court's citation of Woodrum is not relevant to the Plaintiffs claims violations of due process, fraud on the court, state created danger, serious bodily injury under color of law. That she is aware of, she did not state or claim a cause of action for *"[m]ere negligence or lack of due care by state officials in the conduct of their duties.* The District Court erred by dismissing plaintiffs' cause of action for section 1983, on the grounds stated above. (see Davis v. Scherer, 468 U.S. 183 (1984).

> *"When a federal statute condemns an act as unlawful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to*

which are to be derived from the statute and the federal policy which it has adopted."
"And it is also well settled that, where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." J. I Case Co. V. Borak, 377 U. S. 426 (1964)].

4 State Workers' Compensation Immunity Does Not Legally Apply to Plaintiffs Third Cause of Action for Abuse of Powers that took Place Between the Years 2005-2010.

District Court's statement Eleven;

"Plaintiffs' first and second causes of action sound in tort, while their third claim asserts abuse of powers associated with the alleged concealment of information in the state court proceedings. At the heart of plaintiffs' claims is the implicit request that this court overturn the reasoned conclusion of the state courts that plaintiffs' exclusive remedies, at least against defendants CDF and GSTD, lay with the state workers' compensation system. However, as explained below, this court is without jurisdiction to reconsider this conclusion." [see Vol. 2. App. Ex. No. 6. pg. 17, ¶1].

Plaintiffs allegations of fraud, fraud on the courts and violations of civil rights are Federal claims that occurred during the years 2005-2010. The Plaintiffs were not employees of the Defendants during those years. State jurisdiction, exclusive remedy of Workers' Compensation Law, and/or immunity, does not legally apply for those years, nor can the Defendants' rightfully claim them. It is Plaintiffs belief that had the lower Courts when they dismissed Plaintiffs' case due to Defendants' misleading claims of *Exclusive Remedy*, that did not exist, did so in error.

5. Plaintiffs' Are Not Time Barred Pursuant to State Law.

District Court's statement Twelve;

"To the extent that plaintiffs' tort claims, based on the alleged negligent and intentional failure of defendants to protect plaintiffs, may be made against an individual defendant, they – and defendants' vigorous statute of limitations defenses – are grounded in state common law.
Since a federal court should not exercise pendent jurisdiction over state claims in the absence of federal subject matter jurisdiction, see United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966), there remains no basis for this action to proceed in this court." [see Vol. 2. App. Ex. No. 6. pg. 26, ¶2].

a. For the record the plaintiffs did not discover the alleged fraud and fraud on the courts committed by the Defendants' until November 2007. They then filed their action in Federal District Court in December of 2007.

b. Pursuant to the following case law among others, the plaintiffs are not time barred by the State. (See Holmberg v. Armbrecht, 327 U.S. 392 (1946).

"Third, "the fraudulent concealment by the defendant of the facts upon the existence of which the cause of action depends tolls the statute [of limitations] . . . ." (Kimball v. Pacific Gas & Elec. Co. (1934) 220 Cal. 203, 215.) Under this equitable doctrine, a party that has concealed a claim is estopped from asserting the statute of limitations as a bar to the claim. (See 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 685, pp. 872-873; id. §§ 697-698, pp. 889-890.) The doctrine applies to all statutes of limitation, including the pertinent provisions of section 339(1). (See 3 Witkin, op. cit. supra, § 693, pp. 885-886; Sears, Roebuck & Co. v.

Blade (1956) 139 Cal.App.2d 580, 589 [applying doctrine to relevant provisions of section 339(1)].)" Fuller v. Bethany Apostolic Church 3/3/98 CA2/4 B107691.

c. Plaintiffs do not have any State of California, claims in their Complaint [see Vol. 2. App. Ex. No. 11. pgs. 50-65]. Their causes of action are based solely on federal statute and federal claims.

6. Plaintiffs' Fall Under the Protection of the OSH ACT of 1970.

District Court's Statement Thirteen;

'Plaintiffs rely on several state and federal Occupational Safety and Health Act ("OSHA") provisions, e.g., the "General Duty Clause" of Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 654 (setting forth the duties of employers and employees), including federal OSHA regulations concerning the telecommunications industry, specifically, 29 C.F.R. §1910 268(a)(3), (c)(1)(p)(2) and (3). However, these provisions do not create private rights of action. See, e.g., Crane v. Conoco, Inc., 41 F.3d 547, 533 (9th Cir. 1994); see also International Union, et al. v. Johnson Controls, Inc., 499 U.S. 187, 214 (1991) ("OSHA does not provide a private cause of action for violations of OSHA or its implementing regulations). [Vol. 2. App. Ex. No. 6. pg. 25, ¶3].

Plaintiffs did not state a cause of action under OSHA and or C.F.R. §1910 268(a)(3), (c)(1)(p)(2) and (3) . Plaintiffs stated they fell under the protection of the OSH Act, which included *29 U.S.C. §654, a general duty clause.* [see Vol. 2. App. Ex. 11. pg. 54, ¶3] and C.F.R. §1910 268(a)(3), (c)(1)(p)(2) and (3) [see Vol. 2. App. Ex. 11. pg. 60, footnote 1]. Plaintiffs' claimed a cause of action for injury under color of Law, injury on Federal Lands, deprivation of life and that the defendants violated the

Plaintiffs civil rights. [see Vol. 2. App. Ex. No. 11. pgs., 59-60].

ARGUMENT PART C

1. Defendants have waived their Eleventh Amendment immunity and for good cause as shown below.

a. The Defendants have signed a lease with the United States Department of Agriculture for their telecommunications/lookout site at Likely Mountain. In signing the lease, they allegedly, agreed to uphold all state and federal law and to stand liable for any claims of injuries or damages that would occur at the site.

b. Defendants have voluntarily brought their fraud into the District Court. The Defendants Division of Telecommunications, Richard Williams, and Michael Ensminger, in April 2008, joined with the private corporation defendants' to aid those defendants to escape liability and submitted the same alleged fraudulent documents and perjured statements to the District Court, that they submitted to the state courts, in Appellant's related case that the District Court makes reference to several times in its Findings [Related Case No. CIV 05-2649. Dist.Crt. Dkt. No. 170. Def. Motion for Summary Judg. Attach. # 4 & 5].

The defendants' newly alleged fraud committed in the District Court, April 7, 2008, has greatly prejudiced Appellant in this action and in her related action against the private corporation defendants doing business at Likely Mountain, due to the influence of State defendants' on the District Court. The alleged fraudulent statements made by the Defendants' is a federal crime and are further acts by the Defendants' to muddy-up the lower Courts' decisions so that the deaths and injuries at Likely Mountain, can be covered up. This High Court has the

ability to stop that cover-up and not let the Defend-ants and the lower courts pretend it never happened. [see Lapides v. Board of Regents of University System of Georgia, 535 U.S. 613 (2002)].

c. The Defendants allegedly, have committed fraud and fraud on the courts and in doing so obstructed justice and violated the plaintiffs' rights to due process and equal protection of the Laws. Such acts and conduct fall outside the scope of the Law, and by such acts and conduct the state defendants have waived their rights to qualified immunity pursuant to the federal statute and the Fourteenth Amendment and can be sued in Federal Court. [see Ex parte Young, 209 U.S. 123 (1908)].

d. California Constitution Article 3, as it states below, in section 1 and 5, does declare that the State defendants can be sued in the courts of law, the Federal District Court does meet the definition of a court of law

> *"§1 The State of California is an inseparable part of the United States of America, and the land."*
>
> *"§5 Suits may be brought against the State in such manner and in such courts as shall be directed by law."*

e. The Appellant has claimed a cause of action pursuant to Title 18 U.S.C. §1864, for injury on Federal Lands by hazardous device (radiation emitting antennae). Congress has mandated within subsection (e), she has a right *to commence* without regard to *citizenship*, a private action in District Court, against those who harmed her on Federal Lands.

f. The Defendants lease from the United States Department of Agriculture, the land they have their telecommunications/lookout site located on. The Defendants also in turn lease space back to the United States Department of Agriculture for telecommunications' equipment under their supervision. It is Appellant's belief that pursuant to past case law, the Defendants have waived their

Eleventh Amendment immunity by engaging in business with the Federal Government and causing injury with a Federally Regulated Industry and substance. (See Parden v. Terminal R. Co., 377 U.S. 184 (1964).

2. The Lower Courts Misconstruing of the Two Type of Fraud and the Dates they Occurred.

The District Court and the Ninth Circuit, with considerable help from the Defendants, confused the two types of fraud involved and the dates they occurred. At the time they Plaintiffs were in State Court, their allegations claimed the Defendants *fraudulently concealed the dangerous condition of their property*. In Federal Court the Plaintiffs allegations are *fraud and fraud on the courts*. The two types of fraud are not one and the same. While the first may be based in negligence, the other is a felony and in violation of Plaintiffs' Constitutional rights when it is used to mislead a court and obstruct justice. It is Appellant's belief that the error in the lower Court's ability to distinguish between the two types of fraud and the dates they occurred, has greatly prejudiced her case.

3. Defendants Claim to the District Court that the Fraud is a State Issue

The Defendants have never claimed they did not commit fraud. Instead, they claim, immunity pursuant to the Eleventh Amendment, sovereign immunity, Rooker-Feldman, Workers' Compensation, Rule 12(b)1 and 12(b)(6). Defendants' attorney of record Mr. Walters, clearly stated to the District Court, *"Submitting "false" or "misleading" documents at best states a state tort claim for abuse of process, not a constitutional claim."*[Dist. Crt. Dkt. No. 5-1, pg 8, ¶3].

Clearly the above statement does not hold when the *"false" or "misleading" documents"*, were submitted to state and federal courts to obstruct justice and deny due process and equal protection under the laws to a citizen of

the United States. Such acts are Federal Constitutional violations of a Citizen's rights by all the State Defendants.

STATEMENT OF RELATED CASE

This Appellant has been dismissed from the District Court and the Ninth Circuit, Case No. CIV 05-2649; basically on the grounds of *collateral estoppel,* due to the Defendants in this case, bringing their fraud into District Court to support the Defendants in that case summary judgment motion. If at all possible, she does intend to appeal that the Judicial errors made in that case before this Court.

CONCLUSION

For all the above reasons, this Petition for a Writ of Certiorari should be granted to this Appellant by this Supreme Court of the United States.

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on October 22, 2010

MARY A. JASSO
Petitioner in Pro Per